

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 15th day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Fei Yan Yuan, _____

Petitioner,

-v.-

No. 05-6857-ag
NAC
A79-456-538

Alberto R. Gonzales, United States Attorney General, and
The Department of Homeland Security,

Respondents.

FOR PETITIONER: Stuart Altman, New York, New York.

FOR RESPONDENTS: Matthew D. Orwig, United States Attorney for the Eastern District of Texas, Paul Naman, Assistant United States Attorney, Beaumont, Texas.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is DENIED.

2 Fei Yan Yuan petitions for review of the BIA's December 2005 decision in which the
3 BIA affirmed Immigration Judge ("IJ") Alan A. Vomacka's order denying Yuan's applications
4 for asylum, withholding of removal and Convention Against Torture ("CAT") relief, and
5 ordering her removed. We presume the parties' familiarity with the underlying facts, the
6 procedural history, and the scope of the issues presented on appeal.

7 When the BIA agrees with the IJ's conclusion and, without rejecting any of the IJ's
8 grounds for decision, emphasizes particular aspects of that decision, this Court reviews the IJ's
9 decision including the portions not explicitly discussed by the BIA. *See Yun-Zui Guan v.*
10 *Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). This Court reviews the agency's factual findings
11 under the substantial evidence standard.

12 The IJ dismissed Yuan's family practice policy and illegal departure claims as well as her
13 CAT claim. The IJ also found that Yuan had not personally suffered past persecution based on
14 her religious beliefs. Yuan, however, does not raise any of these claims in her petition for review
15 to this Court and we therefore consider them waived. *See Yueqing Zhang v. Gonzales*, 426 F.3d
16 540, 541 n.1, 545 n.7 (2d Cir. 2005).

17 It is not apparent whether the IJ made an explicit adverse credibility finding here, but
18 even if he did, he also assumed the veracity of Yuan's claims and found that she had failed to
19 establish her burden of proof of either past persecution or a well-founded fear of persecution
20 upon her return to China. The IJ first found no evidence indicating that authorities were
21 interested in personally persecuting Yuan. Yuan only testified to one occasion when she
22 witnessed a government intrusion and the IJ noted there was no indication authorities were
23 interested in her due to her mother's or her involvement in preaching the gospel to other villages.

1 Yuan made no assertions that authorities were interested in her when they detained her mother.
2 Furthermore, the fact that Yuan initiated her departure plans from China prior to that event
3 undermines her claim that she left in fear that authorities would arrest and detain her too.

4 The IJ and BIA also reasonably determined that Yuan left her village when she was
5 approximately sixteen years old and was able to practice her religion in Fuzhou City with no
6 problems or restrictions. The IJ and BIA thus reasonably determined that she could relocate to
7 another part of China in order to avoid persecution. *See* 8 C.F.R. 1208.13(b).

8 The IJ and BIA's reasons for denying Yuan's asylum application is thus based on
9 substantial evidence. Because the evidence was insufficient to establish a threat to the
10 petitioner's life or freedom, that determination necessarily precludes success on the claim for
11 withholding of removal.

12 _____For the foregoing reasons, the petition for review is DENIED. Having completed our
13 review, any stay of removal that the Court previously granted in this petition is VACATED, and
14 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
15 request for oral argument in this petition is DENIED in accordance with Federal Rule of
16 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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18 FOR THE COURT:
19 Roseann B. MacKechnie, Clerk
20

21 By: _____